IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

AS.No. 572 of 1994(Y)

OS.87/1987 of PRL.SUB COURT,TRIVANDRUM
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APPELLANT - PLAINTIFF:

K. PARAMESWARAN NAIR, S/O. KRISHNA PILLAI, AGED 50, GOVERNMENT CONTRACTOR, PROPRIETOR, VINAYAKAR ENGINEERING WORKS, VELLAYAMBALAM, TRIVANDRUM.

BY ADV. SRI VADAKARA V V N MENON

RESPONDENTS - DEFENDANTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT, SECRETARIAT, TRIVANDRUM.**

2. **THE SUPERINTENDING ENGINEER, BUILDINGS & LOCAL WORKS, SOUTH CIRCLE, TRIVANDRUM - 10.**

BY ADV. GOVERNMENT PLEADER SHRI L.G. SURESH BABU

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 572 OF 1994

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Dated this the 20th day of June, 2007

J U D G M E N T

Plaintiff in O.S. No.87 of 1987 on the file of the Sub Court, Thiruvananthapuram is the appellant. Appeal is filed against the decree and judgment dismissing the suit for settlement of accounts.

2. Plaintiff was a contractor. Plaintiff was awarded the work of State Institute of Languages - Construction of Godown in Nalanda Compound. On 28.2.1985 he entered into Exhibit B1 agreement with the respondents for the work fixing the date of completion of the work as 13.2.1986. Plaintiff also deposited the earnest money. It was averred that plaintiff made all arrangements for finishing the work before the time limit. It was averred that plaintiff was prevented from doing the work on account of the failure of the defendants and their officers to duly honour, perform and discharge the guaranteed assurances and obligations under the agreement. It was averred that the defendants had changed the original plan and the design itself was changed

without preparing any drawing or plan. It was averred that the plaintiff was directed by the Officers of the defendants to carry out the work without any plan. The plaintiff completed 16 numbers of RCC columns with RCC foundation, RCC column beams, etc. in addition to the execution of the necessary earth and fabrication works. It was averred that the said works were carried out as extra items. It was averred that he had to execute some other works such as RCC shelves/racks upto the lintel level as directed by the Officers of the defendants. It was averred that there was delay in supplying MS rods and cement required for the work. Plaintiff had to purchase the same from open market spending huge amounts. It was averred that there was nobody to guide or help the plaintiff. It was averred that on account of the breach committed by the defendants and on account of the non-supply of departmental materials and non-furnishing of the finalised plan, drawings, detailed specifications, etc., plaintiff could not complete the work within the time specified. It was specifically averred that the defendants committed breach of the agreement and so they were liable to make good the

damages sustained by the plaintiff. It was averred that the contract was terminated and the defendants forfeited the earnest money deposit. Plaintiff challenged the termination of the contract and forfeiture of the earnest money deposit and prayed for settlement of accounts. It was also prayed that the defendants may be directed to pay for the works done by the plaintiff at the prevailing rate treating the work done by him as extra items and also to pay him an amount at least at the rate of 15% of the value of the balance work as prevented gains. It was also prayed for the return of the earnest money deposit and retention amounts.

3. Defendants resisted the suit by filing a written statement. It was contended that it was the plaintiff who committed breach of the agreement. It was admitted that some changes were made in the specifications, but they were only minor changes and did not affect the main structure of the work. No revised plan was necessary. Plaintiff readily accepted those changes and agreed to complete the execution of the work. The averment that the plaintiff purchased MS rods and cement from open market spending huge amounts

from his pocket was denied. It was contended that there was no delay in supplying the said items. It was contended that plaintiff did not use the entire MS rods and cement handed over to him and 677 Kgs. of MS rods and 277 bags of cement were outstanding in the account of the plaintiff. It was contended that the plaintiff committed breach of the agreement and abandoned the work. In spite of notice received by him he did not respond. So the contract was cancelled and work was re-tendered at the risk and cost of the plaintiff. It was contended that plaintiff was not entitled to any amount claimed by way of interest and actually amounts were due from the plaintiff to the defendants. It was contended that the plaintiff was not entitled to get return of the earnest money and retention amounts.

4. The trial court found that since the prayer in the suit was for settlement of accounts, the same is not maintainable. It was held that no question of any settlement of accounts arises in this case. Question, if any, arise for consideration in the suit was who committed breach and whether plaintiff sustained damages. Court below found that

such amounts could have been very well pleaded in the plaint. Court below also found that the plaintiff is entitled to get back the earnest money and retention amounts. It was also found that the plaintiff will also be relieved off all contractual obligations and exonerated from the responsibility of executing the balance work. Plaintiff, who was dissatisfied with the decree and judgment passed by the Court below by which the claim for settlement of accounts was dismissed, has filed this appeal.

5. The only question arising for consideration is whether the appellant is entitled to get a decree for settling accounts with the respondents. The fact that appellant and respondents entered into an agreement on 28.2.1985 was admitted by both sides. Appellant undertook the work of State Institute of Languages - Construction of Godown in Nalanda Compound. He had agreed to complete the work on or before 13.2.1986. Admittedly, not even one half of the work was completed before the expiry of the period. It is also admitted that the second respondent terminated the contract at the risk and cost of the appellant and work was re-

tendered.

6. The main contention raised by the appellant is that substantial change was made from the original plan and without any diagrams he was asked to do such works. According to the respondents those works are only minor in nature and it does not affect the whole building as such and hence it was not necessary to draw any fresh diagram. According to the appellant he had finished work of erecting 16 numbers of RCC columns with RCC foundation, RCC column beams etc. upto lintel level. The appellant had claimed that he purchased MS rods and cement from open market by spending huge amount from his pocket. The specific case put forward by the appellant is that breach of contract was committed by the respondents and on account of the breach he was unable to finish the work within the time. On the other hand, the case put forward by the respondents is that the appellant did some work and got an amount of Rs.24,000/- under part payment bill. Thereafter without assigning any reason the appellant abandoned the work. As rightly held by the court below there is no question of any settlement of

accounts. Suit must have been one for damages on account of the breach committed by the respondents. Amount spent by the appellant and quantum of damages could have been very well averred in the plaint. He could have made specific claims under various heads. Instead of claiming such reliefs, he filed the present suit as if the accounts to be settled. So the decree and judgment dismissing the suit does not call for any interference are only to be confirmed.

In the result, the appeal is dismissed. The decree and judgment passed by the court below in O.S. No.87 of 1987 are confirmed. Parties are directed to suffer their respective costs.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 572 OF 1994

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J U D G M E N T

20TH JUNE, 2007